

Rider D

1. **Audit.** Funds provided under this Agreement are subject to the audit requirements contained in the Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP-III), Federal OMB Circular A-110, and may further be subject to audit by authorized representatives of the Federal Government, according to the Agreement Settlement Form (pro forma) contained in Rider F (if applicable). This provision does not apply to contracts that provide only MaineCare seed funds.

2. **Reporting Suspected Abuse/Neglect.** The Provider shall comply with the DHHS rules for reporting abuse or neglect of children or adults pursuant to 22 MRSA §§ 3477 and 4011-A. In addition, the Provider agrees to follow the DHHS rules on reportable events pursuant to 14-197 CMR ch. 9.

3. **Confidentiality.** The provider shall comply with Federal and State statutes and regulations for the protection of information of a confidential nature regarding all persons served under the terms of this Agreement. In addition, the provider shall comply with Title II, Subtitle F, Section 261-264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, titled "Administrative Simplification" and the rules and regulations promulgated thereunder.

To the extent the Provider is considered a Business Associate under HIPAA, the Provider shall execute and deliver in form acceptable to the Department a Business Associate agreement (BA agreement). The terms of the BA agreement shall be incorporated into this Agreement by reference. The Department shall have recourse to such remedies as are provided for in this Agreement for breach of contract, in the event the Provider either fails to execute and deliver such BA agreement to the Department or fails to adhere to the terms of the BA Agreement.

4. **Lobbying.** No Federal or State appropriated funds shall be expended by the Provider for influencing or attempting to influence, as prohibited by state or federal law, an officer or employee of any Federal or State agency, a member of Congress or a State Legislature, or an officer or employee of Congress or a State Legislature in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. The signing of this Agreement fulfills the requirement that providers receiving over \$100,000 in Federal or State funds file with the Department with respect to this provision.

If any other funds have been or will be paid to any person in connection with any of the covered actions specified in this provision, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form available at <http://www.whitehouse.gov/omb/grants/#forms>.

5. **Drug-Free Workplace.** By signing this agreement, the Provider certifies that it shall provide a drug-free workplace by: publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the grantee's policy of maintaining a drug-free workplace, available drug counseling and rehabilitation programs, employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; providing a copy of the drug-free workplace statement to each employee to be engaged in the performance of this agreement; notifying the employees that as a condition of employment under the agreement the employee will abide by the terms of the statement and notify the employer of any criminal drug conviction for a violation occurring in the workplace no later than five days after such conviction.

The provider shall notify the state agency within ten days after receiving notice of criminal drug convictions occurring in the workplace from an employee, or otherwise receiving actual notice of such conviction, and will take one of the following actions within 30 days of receiving such notice with respect to any employee who is so convicted: take appropriate personnel action against the employee, up to and including termination, or requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

6. **Debarment and Suspension.** By signing this agreement, the Provider certifies to the best of its knowledge and belief that it and all persons associated with the agreement, including persons or corporations who have critical influence on or control over the agreement, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

The Provider further agrees that the Debarment and Suspension Provision shall be included, without modification, in all sub-agreements.

7. **Environment Tobacco Smoke.** By signing this agreement, the Provider certifies that it shall comply with the Pro-Children Act of 1994, P.L. 103-227, Part C, which requires that smoking not be permitted in any portion of any indoor facility owned, leased, or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or MaineCare funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

Also, the provider of foster care services agrees that it will comply with Resolve 2003, c. 134, which prohibits smoking in the homes and vehicles operated by foster parents.

8. **Medicare and MaineCare Anti-Kickback.** By signing this agreement, the Provider agrees that it shall comply with the dictates of 42 U.S.C. 1320a-7b(b), which prohibits the solicitation or receipt of any direct or indirect remuneration in return for referring or arranging for the referral of an individual to a provider of goods or services that may be paid for with Medicare, MaineCare, or state health program funds.
<http://www.gpoaccess.gov/uscode/index.html>

9. **Publications.** When issuing reports, brochures, or other documents describing programs funded in whole or in part with funds provided through this agreement, the Provider agrees to clearly acknowledge the participation of the Department of Health and Human Services in the program. In addition, when issuing press releases and requests for proposals, the Provider shall clearly state the percentage of the total cost of the project or program to be financed with agreement funds and the dollar amount of agreement funds for the project or program.

10. **Motor Vehicle Check.** The Provider shall complete a check with the Bureau of Motor Vehicles on all of Provider's staff and volunteers who transport clients or who may transport clients. This check must be completed before the Provider allows the staff person or volunteer to transport clients, and at least every two years thereafter. If the record of a staff member or volunteer contains an arrest or conviction for Operating under the Influence or any other violations which, in the judgment of the Provider, indicate an unsafe driving history within the previous three (3) years, the Provider shall not permit the staff member or volunteer to transport clients. The Provider shall implement appropriate procedures to ensure compliance with the requirements of this section.

11. **Ownership.** All notebooks, plans, working papers, or other work produced in the performance of this Agreement, that are related to specific deliverables under this Agreement, are the property of the Department and upon request shall be turned over to the Department.

12. **Software Ownership.** Upon request, the State and all appropriate federal agencies shall receive a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to do so, all application software produced in the performance of this Agreement, including, but not limited to, all source, object, and executable code, data files, and job control language, or other system instructions. This requirement applies only to software that is a specific deliverable under this Agreement, or is integral to the program or service funded under this Agreement, and is primarily financed with funding provided under this Agreement.

13. **Exceptions to OMB Circulars.**

a. Bad Debt. Bad debt is defined as the operating expense incurred because of the failure to collect receivables, and the related costs to collect. Bad debts must be offset against identified non-State, non-Federal, unrestricted revenue. The provider must make a good faith effort to collect the receivable (e.g. through billing, pursuing through a collection agency, etc.)

b. Interest Expense

i. Per A-122, paragraph 23: costs incurred for interest on borrowed capital are unallowable. Interest on debt incurred after 9/29/95 to acquire or replace capital assets is allowable.

ii. DHHS exception allows interest on borrowed capital on or before 9/29/95 to be prorated and offset against DHHS agreement State revenue and other unrestricted non-Federal revenue.

(Note: interest incurred for short term cash flow loans can be offset using non-State, non-Federal unrestricted revenue).

c. Interest Income. Providers shall maintain advances of Department funds in interest-bearing accounts, unless the total agreement amount is less than \$120,000, throughout the contract period until settlement. Interest earned on state or federal funds must be returned to the Department; the provider may retain the first \$250 for administrative expenses. See federal circular A 110 paragraph 22 for more details.

d. Travel. The reimbursement rate for mileage charged to DHHS funded programs cannot exceed the reimbursement rate allowed for state employees. (5 M.R.S.A. §1541(13)(A).

e. Any other exceptions to OMB Circular A-122 are allowable only with prior written approval from the Department, and must be offset against identified unrestricted non-Federal revenue.

14. **MaineCare regulations.** Providers who receive MaineCare funds will assure that their programmatic and financial management policies and procedures are in accordance with applicable MaineCare regulations and that their staff are familiar with the requirements of the applicable MaineCare service they are providing. Providers will ensure that they are in compliance with the applicable MaineCare regulation prior to billing for the service.

15. **Revenue Maximization.** The Provider shall conduct its services in such a way as to maximize revenues from MaineCare and other third-party sources such as private insurance as may be available to reduce the need for funds from the Department. Contract funds may not be used to pay for services that are reimbursable by other third party sources, such as private health insurance and MaineCare, under any circumstances. It is the Provider's obligation to seek and obtain reimbursement from other third party sources for any reimbursable services provided to covered individuals.